

# Creating a Market Analysis Program

## HB 1532 SB 5717

### Background

State insurance regulators oversee the market conduct of insurance companies doing business in their state. However, there is very little uniformity in how this oversight is conducted.

Under current state law, the Office of the Insurance Commissioner (OIC) must examine the market conduct of insurers at least once every five years. A market conduct exam involves an on-site review of records and practices relating to sales, advertising, underwriting, complaint handling, claims, rating and administrative procedures of insurance companies.

In an effort to modernize the regulation of insurance and create a more uniform approach to market conduct oversight, the National Association of Insurance Commissioners (NAIC) is promoting a new process called Market Analysis. This profound change to the regulation of market conduct is being driven at the national level in order to better focus limited resources on consumer protection.

Our adoption of this new program will modernize our market conduct oversight approach and will enhance our ability to protect consumers when problems arise. By relying on Market Analysis, and not the 5 year exam cycle, the OIC will discover and respond to marketplace issues as they occur.

The Market Analysis approach calls for an annual review of data covering all companies doing business in a particular state. Analysis of this data is used to understand the current marketplace in a state, and to point out those areas where regulatory intervention may be needed. There are many ways this intervention could take place including a more indepth review of company data, a market conduct examination or participation in a multi-state examination effort.

### The problem

Currently, there is no standard approach to market conduct examination of insurance companies. Some states perform intensive reviews while others conduct very limited exams. And some states fail to perform even the most minimal market oversight of their domestic insurers. This inconsistent approach to regulation has created an adversarial environment between companies and regulators, mistrust among the states and increased potential harm to consumers.

As with other states, Washington's market conduct examinations are retrospective. This means that any problems we uncover during an exam most likely occurred in the past and the consumers have already been harmed. We need the ability to uncover potential problems before they become pervasive within a company and potentially within the market.

### Solution

Establish a Market Conduct Oversight program that enables the Insurance Commissioner to conduct a standardized review of every authorized insurance company annually through a structured Market Analysis program. Under the new program, the OIC would be able to direct resources toward finding problem insurers and issues as they occur and focus on correcting specific regulatory violations before consumers are harmed.

Under a Market Analysis approach, there are several levels of review that help focus regulatory resources. The first level provides a cursory review of how insurers are performing and helps uncover which insurers need a closer review. The next two levels are more in-depth and help uncover which companies, if any, require additional action. This allows the commissioner to select the least intrusive and most cost-effective market conduct action necessary to protect consumers.

Through Market Analysis, the OIC would coordinate examination efforts with other states and review market data in a timelier manner. Market Analysis provides methods for monitoring the state's insurance marketplace by identifying trends and changes in market activity and will allow us to focus our resources on identifying and resolving problems which could potentially harm consumers.

During the 2006 legislative session, supplemental budget funding was approved to begin the implementation of the Market Conduct Oversight program. Funding in the 2007-09 biennium is needed to fully implement the program.

### **Summary of the proposed legislation: (Based on the NAIC Model Act)**

- Provides list of regulatory activities to address marketplace issues and concerns - This non-exclusive list of "tools" allows OIC to choose the most appropriate, least intrusive means of addressing identified marketplace issues.
- Will eliminate the need for 5-year cycle of market conduct examinations for domestic insurers when program is fully implemented – Examination authority is retained as one of the listed tools for use based on reasoned analysis rather than on timing.
- Provides domestic deference to states with comparable regulatory scheme – Deference allows OIC to accept market analysis activity by comparable states on general or common regulatory matters, while preserving OIC authority over strictly local market issues.
- Provides confidentiality for insurer documents in the possession of the Commissioner – Confidentiality encourages insurers to freely share internal assessments with OIC, reducing costs for both the insurer and OIC.
- Establishes qualifications and immunity of market conduct oversight personnel – Listed qualifications assure insurers that market conduct oversight personnel understand insurer operations before opining on insurer activity. Immunity allows market conduct oversight personnel to objectively analyze and report on marketplace activity without fear of reprisal. Both of these issues assure better consumer protection.
- Outlines procedures to communicate and coordinate market conduct actions amongst state insurance regulators to foster the most efficient and effective use of resources.

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